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15852 Mr. Martin

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest Against FAA Determination That Bid Was Nonresponsive]

FILE: B-199583

DATE: January 7, 1981

MATTER OF: Sequoia Pacific Corporation

DIGEST:

1. Bid proposing "equal" product in response to brand name or equal IFB was properly rejected as nonresponsive since proposed product did not meet all listed salient characteristics and bidder's insertion of word "Equal" did not establish that product would be modified to meet salient characteristics.
2. Issue of whether certain salient characteristics appearing in "brand name or equal" purchase description were necessary is not "significant" within context of exception to timeliness requirements of GAO Bid Protest Procedures and consequently issue, since it is untimely raised, will not be considered.

Sequoia Pacific Corporation protests the rejection by the Federal Aviation Administration (FAA) of its bid submitted in response to invitation for bids (IFB) No. DTFA01-80-B-27440. Sequoia's low bid was rejected as nonresponsive because the FAA could not determine from the bid submitted that all of the solicitation's requirements would be met. Sequoia contends the rejection was improper and that the specifications were unduly restrictive of competition. For reasons stated below, this protest is denied in part and dismissed in part.

The IFB called for bids to provide 236 special digital clocks described as "Datum, Inc., Model Number 9520-219 or equal" and it listed a number of salient characteristics which any product offered as equal would have to meet. The IFB warned that any bidder offering other than the specified brand name must fully describe the product in sufficient detail to assure compliance

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with all requirements including the listed salient characteristics. The Datum, Inc. Model 9520-219 is similar but not identical to a model number TAC-605 clock previously developed by Magnasync/Moviola Corporation (M/M) and previously procured by the FAA with a purchase description specifying "MAGNASYNC/MOVIOLA Corp. TAC-605 or equal." That procurement, which was restricted to small business, was awarded to Datum, Inc., after M/M was disqualified because it was a large business.

On the current procurement Sequoia, which had entered into a license agreement with M/M, submitted a bid offering to supply "MAGNASYNC/ MOVIOLA Corp. TAC-605 'Equal.'" However, the bid did not otherwise specify if or how the TAC-605 would be modified to comply with the required salient characteristics. Sequoia also enclosed with its bid some pages from the previous solicitation listing the TAC-605 characteristics, a copy of a letter of June 27, 1979 from M/M to the FAA describing the TAC-605, and a M/M technical manual for the TAC-605. After determining that the TAC-605 did not meet the salient characteristics and that there was no indication in Sequoia's bid or its enclosures that the TAC-605 would be modified, the FAA found Sequoia's bid to be nonresponsive.

Although Sequoia concedes the TAC-605, unless modified, will not meet the requirements of the solicitation, it insists its inclusion of the word "Equal" made it clear the required modifications would be made. We do not agree.

When a brand name or equal purchase description is used, it is the responsibility of a bidder who offers an "equal" product to establish, by means of information or samples furnished with the bid, that the offered product will meet the salient characteristics of the brand name product. Cathey Enterprises, Inc., B-194334, June 13, 1979, 79-1 CPD 418; Venco Corp., B-187318, February 15, 1977, 77-1 CPD 113. We do not believe the bidder's mere insertion of the word "equal" next to the model number of the product reasonably can be viewed as satisfying that requirement. Rather, there must be some reasonable showing

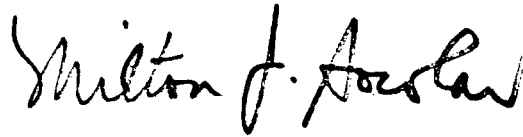
that the equal product in fact meets the salient characteristics or that there will be specific modifications so that it will meet them. At best, the bidder's insertion of the work "equal" might be viewed as a blanket offer to comply with the specifications. Such a blanket offer is not sufficient to demonstrate compliance. B-176484(1), January 22, 1973. Consequently, we believe the agency acted properly and the protest in this issue is denied.

Sequoia also challenges the use of a "brand name or equal" purchase description in this case and the need for the listed salient characteristics which the TAC-605, unless modified, does not meet. It contends that as these requirements exceed the minimum needs of the FAA, they unduly restrict competition. Sequoia recognizes that our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), require that protests based on alleged improprieties which are apparent prior to bid opening must be filed prior to bid opening. It insists, however, that the issues it raises are significant to procurement practices and procedures and, therefore, even if they are untimely, they may be considered under 4 C.F.R. § 20.2(c) on their merits.

In order to invoke the significant issue exception to our timeliness rules, the subject matter of the protest must not only evidence a principle of widespread interest or importance to the procurement community, see, e.g., Willamette-Western Corporation; Pacific Towboat and Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, but must also involve a matter which has not been considered on the merits in previous decisions. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225; Wyatt Lumber Company, B-196705, February 7, 1980, 80-1 CPD 108; Garrison Construction Company, Inc., B-196959, February 26, 1980, 80-1 CPD 159.

We have numerous prior decisions setting forth the basic principles governing brand name or equal purchases and involving the issue as to whether such purchases unduly restrict competition by overstating the needs of the agency. Gerber Scientific Instrument Company, B-197265, April 8, 1980, 80-1 CPD 263; Hutchison Brothers Excavating Co. Inc.,

B-197812, August 6, 1980, 80-2 CPD 93; Save-on Wholesale Products, B-194510, July 5, 1979, 79-2 CPD 9; A.A. Lasher, Inc., B-193932, March 14, 1979, 79-1 CPD 182. Thus, while we recognize the importance of this matter to the protester, we do not believe the propriety of some of the salient characteristics listed in a particular "brand name or equal" purchase description should be considered a "significant issue" within the meaning of our Bid Protest Procedures. Consequently, we dismiss as untimely the portion of the protest dealing with this issue.

A handwritten signature in black ink, reading "Milton J. Lasher". The signature is written in a cursive, flowing style with a large initial "M".

For The Comptroller General
of the United States